

**MGM Mirage d/b/a The Mirage Casino-Hotel and Southern California-Nevada Regional Council of Carpenters, affiliated with United Brotherhood of Carpenters and Joiners of America, AFL-CIO, CLC.** Case 28-RC-5871

November 20, 2002

**DECISION ON REVIEW AND ORDER**

BY MEMBERS LIEBMAN, COWEN, AND BARTLETT

On January 4, 2001, the Regional Director for Region 28 of the National Labor Relations Board issued a Decision and Order in this proceeding. The Regional Director found that the petitioned-for combined unit of carpenters and upholsterers and the alternative separate units of carpenters and upholsterers were inappropriate for bargaining. The Regional Director concluded that the two groups (1) did not constitute functionally distinct groups with common interests separate and apart from the Employer's other engineering employees and (2) did not represent a traditional craft unit entitled to separate representation. The Regional Director further concluded that the smallest appropriate unit containing the petitioned-for employees was the 210 employee engineering department. Because the Petitioner did not wish to represent the employees in an overall engineering department unit, the Regional Director dismissed the petition.

Thereafter, in accordance with Section 102.67 of the National Labor Relations Board's Rules and Regulations, the Petitioner filed a timely request for review contending that the petitioned-for carpenters and upholsterers were craft employees and that the Regional Director erred in not allowing their separate representation as a traditional craft unit. The Employer filed an opposition to the Petitioner's request for review. On February 7, 2001, the Board granted the Petitioner's request for review.

Having carefully considered the entire record, we find, contrary to the Regional Director, that the petitioned-for combined unit of carpenters and upholsterers is an appropriate unit for bargaining.

**I. FACTS**

The Employer, a division of MGM-Mirage, Inc., operates the Mirage Hotel and Casino located on the "strip" in Las Vegas, Nevada. The Employer's sister facilities located on the Las Vegas strip include Treasure Island Casino-Hotel, Bellagio, MGM-Grand, New York-New York, and Golden Nugget. In addition to these hotels, the Employer's parent company operates three properties in Primm, Nevada, and the Golden-Nugget-Laughlin, located in Laughlin, Nevada. The Employer maintains a work force of approximately 6200 employees, of whom

approximately 210 work in the engineering department. The engineering department is broken into 16 "crews," including a carpentry crew and an upholstery crew.<sup>1</sup> Of these 210 engineering employees, 18 are carpenters and 5 are upholsterers.

The Employer's engineering department operates 24 hours a day, 7 days a week over three shifts—day shift (7 a.m. to 3 p.m.), swing shift (3 to 11 p.m.), and night shift (11 p.m. to 7 a.m.). Except for a single carpenter regularly scheduled to work the night shift, all of the carpenters and upholsterers work the day shift. Likewise, all laborers work the day shift, with the exception of one laborer assigned to the night shift. All painters work the day shift, except one assigned to the swing shift and two assigned to the night shift. The mechanical crew, which is the largest crew, is scheduled on all three shifts with 84 mechanics on the day shift, 19 mechanics on the swing shift, and 19 mechanics on the night shift.

With the exception of the laborers, each crew has its own shop containing necessary tools, equipment, and lockers. The majority of these shops, including the carpentry shop, are located along a single hallway on the first floor of the Employer's facility. In addition to these main shops, some of the crews, including the carpentry crew, have a small satellite office in the hotel's room tower. The carpenters' tower shop is used by the "tower carpenter" assigned to routine maintenance work in the hotel's guest rooms. The tower carpenter reports to the main shop in the morning to receive any work orders from the crew leader and is then reachable via a two-way radio throughout the day when needed.<sup>2</sup>

**A. Carpenters' and Upholsterers' Duties**

Carpenters at the Mirage engage in a wide variety of traditional carpentry work. The carpenters make and repair furniture used in the hotel, including conference tables, desks, wall cabinets, armoires, television cabinets, and chairs. This work may include repair work on expensive, one-of-a-kind furniture requiring the carpenter to make molds, pour castings, do lathe and spindle work, and replicate carvings. The carpenters also work on countertops and repair and hang guest room doors. Additionally, they frame walls, conduct demolition work in

<sup>1</sup> The other crews are: tram, fabrication, mechanical or engineering, electrical, casino, hotel, pools/plumbing, kitchen, garden, special services, paint, locksmith, and senior watch.

<sup>2</sup> In addition to the tower carpenter, the carpentry shop has three other radios—one assigned to the carpentry crew leader, one to the foreman, and one to another carpenter working out of the main carpentry shop. Unlike the carpenters, the engineering crew all carry radios and receive many of their assignments over the radio directly from dispatch.

conjunction with room remodeling operations, and hang and repair drywall.

Aside from the carpenters' specialty hand tools, which the carpenters must provide themselves, the Employer supplies the carpenters with all necessary tools. Located in the carpentry shop is a host of traditional carpentry tools, including joiners, industrial shapers, band saws, lathes, chop saws, compound miter saws, skill saws, routers, nailers, glue guns, drills, edge banding machines, carving tools, and planers. The carpentry shop also contains raw materials such as hard woods, exotic woods, formica, laminates, plastics, plexiglas, corian, sign materials, plywoods, and particle boards.

Generally, the Employer assigns work in the engineering department along craft or crew lines. Accordingly, carpenters are called on to perform carpentry-related work; plumbers, plumbing-related work; etc. However, there have been situations in which carpenters have performed noncarpentry work incidental to their normal duties. Carpenter Dave Cuddie testified that he has installed sinks in counters on which he was working, but noted that the plumbers would actually connect the sinks to the pipes. Carpenter Ed Fieger stated that he has "pulled" sinks on five or six occasions while working on counters and has pushed aside conduit while working on walls. Carpenters are also responsible for cutting and installing the glass for wooden picture frames they make and repair throughout the facility. Additionally, carpenters perform demolition work and one carpenter testified that he has "ripped out" bathrooms.<sup>3</sup> Finally, aside from these specific instances, Night Shift Supervisor Antonello Leone testified that he has occasionally witnessed carpenters doing noncarpentry work, but could give no specifics as to who was doing what type of work.

Likewise, there have been instances where non-carpenters have performed low skilled carpentry work when necessary. For instance, the Employer's fabrication crew builds wooden platforms and barricades and repairs wooden gates, fences, and doors in connection with the Employer's wildlife exhibit. Also, the casino crew routinely performs low-level carpentry work, mostly involving repairs during the night shift.<sup>4</sup>

<sup>3</sup> There is some dispute regarding whether this demolition work is carpentry work or traditional laborer work. The Petitioner's business agent testified that carpenters generally do demolition work where that work has larger, structural implications for the building. The record is unclear as to which category this demolition work occupies.

<sup>4</sup> These include repairs to wooden corners, hinges, pictures, mirrors, access panels (hinge and locking mechanism), door sweeps, draw slides on cash drawers, and minor repairs to tables and chairs. In addition to this work, Night-Shift Supervisor Antonello Leone testified that when he was a casino engineer, he once repaired a 6-inch hole in a wall, which required him to install two metal studs and cut and install a new

Upholsterers at the Mirage principally reupholster furniture. They also hang draperies in meeting rooms. In addition, they change layouts on gaming tables and repair awnings.

### *B. Supervision*

The engineering department has three levels of supervision. It is headed by the director of engineering, William Ham. Director Ham is the ultimate decisionmaker regarding employee hiring, firing, counseling, and discipline, and is responsible for the general oversight of the entire department.

Reporting to the director are four assistant chief engineers, each responsible for different sections of the engineering department.<sup>5</sup> These groupings of the various shops under the assistant chiefs are not functionally based.<sup>6</sup> The assistant chiefs supervise the crew leaders below them. They also approve all overtime and leave requests, recommend employee discipline to Director Ham, sit in on employee interviews, and aid in developing hiring recommendations for Director Ham.

Finally, under the assistant chiefs are various crew leaders responsible for each of the crews. There are separate crew leaders for each of the 16 or so crews making up the engineering department, including the carpentry and upholstery crews. At the hearing, the parties stipulated that these crew leaders are statutory supervisors because they have the authority to use independent discretion in directing and supervising the work of the employees under them. However, the crew leaders do not have the authority to hire, fire, discipline, set wages, or grant overtime.<sup>7</sup> The crew leaders distribute work requests, monitor work reports, do quality control, tour areas, maintain work stations, order parts, and interact with administrative staff. There was testimony that the crew leaders are responsible for drafting and delivering employee evaluations, although these evaluations have not been conducted for years.

piece of drywall. He also testified that on one occasion a casino engineer sanded a corian countertop to remove graffiti. He further testified that 35 percent of the work of a casino engineer and of a night-shift supervisor would be classified as carpentry work and that he routinely uses tools in the carpentry shop during the night shift.

<sup>5</sup> In addition to the four assistant chief engineers, Director Ham supervises the horticulture director, the project coordinator, the training manager, and the office coordinator.

<sup>6</sup> For example, carpentry is grouped with the tram, fabrication, mechanical, and electrical crews; and upholstery is grouped with the casino, hotel, pools and plumbing, and laborer crews.

<sup>7</sup> The crew leaders do, however, decide who gets overtime hours once the overtime expenditure is approved. Additionally, they interview new hires and, together with the assistant chief, make a recommendation to Director Ham whether the person should be hired or not. Director Ham, in turn, reinterviews the candidate and makes the final hiring decision.

Apart from the general supervisory structure, all employees working the night shift are under common supervision. The night crew generally consists of one carpenter, two painters, two plumbers, and one engineer, all under the supervision of the night-shift supervisor.

### *C. Wages, Benefits, and Other Terms and Conditions of Employment*

All engineering department employees are subject to the same terms and conditions of employment. They are all subject to the same employment policies contained in the common employee handbook. They are all eligible to participate in the same pension, health, and welfare benefit plans, as are all the Employer's employees. All engineering employees have common holidays and are entitled to the same vacation benefits.<sup>8</sup> All engineering employees are also subject to a 90-day probationary period, work a standard 40-hour week, and punch in and out on the same three timeclocks.<sup>9</sup> All Mirage employees take their breaks in a common area called the "strip joint." Additionally, the majority of the shops, including the carpentry and upholstery shops, are located along the same hallway on the facility's main level. Finally, all engineering department employees share a common safety officer.

While all engineering employees are required to wear a uniform, their uniforms are different colors. The painters wear white uniforms, the carpenters wear light brown uniforms, and the rest of the engineering department employees wear blue uniforms.<sup>10</sup> Additionally, the various crews earn different wages. For instance, carpenters earn \$22.53 an hour; engineers earn \$23.08 an hour; laborers earn \$12.88 an hour; painters earn \$21.85 an hour; pool employees earn \$11.05 an hour; and sign employees earn \$14.01 an hour.

### *D. Training*

The Employer does not run an apprentice program for either its carpenters or its upholsterers.<sup>11</sup> However, the Employer operates "junior" programs for other crews, which essentially are apprenticeship programs. Making

<sup>8</sup> At some point in the past, the carpenters were only eligible for 1 week of vacation while the rest of the department was eligible for 2. After the Mirage was purchased by MGM, this distinction between carpenters and the other engineers ended and all engineering department employees currently receive identical vacation benefits.

<sup>9</sup> These timeclocks are monitored by the various crew leaders on a rotating basis.

<sup>10</sup> The carpenters' uniform was altered at the carpenters' request. Assistant Chief Jimmy Canaris testified that the carpenters complained that the Employer's standard blue engineering department uniforms looked too dirty because of the saw dust. Per their request, their uniform color was changed to brown to better hide the dust.

<sup>11</sup> The Employer's "junior carpenter" program, essentially an apprenticeship program, ended sometime in 1992.

up for the lack of a formal training program, the Employer seeks only experienced employees and generally requires between 2 to 4 years of relevant experience for all engineering department employees, including carpenters and upholsterers. The Employer does not provide or require any ongoing skills training. Finally, aside from the tram crew, the Employer does not require its engineering department employees to be certified.

The engineering department employees attend between 8 to 10 training sessions a year. These training sessions cover such topics as OSHA standards, "zero tolerance," and customer service. Employees from different shops attend these sessions together. There is always a mix of crews in the training classes so as to not remove an entire department from service for training. In addition, the engineering department has a common safety committee, with a representative from each crew.

### *E. Interchange*

The Employer presented documentary evidence detailing instances of transfers between the carpentry crew and various other crews and departments. During the 7-year span of the Employer's evidence,<sup>12</sup> 14 transfers involving the carpentry department have taken place.<sup>13</sup> Of these 14, all but one was permanent.<sup>14</sup>

### *F. Contact with Other Employees*

Aside from the examples described above, carpenters have contact with other employees during working time. First, the carpenter on the night shift works on a "mixed crew" with plumbers, painters, and an engineer, all under the common supervision of the night-shift supervisor. These employees work together to renovate public restrooms and other common areas, and to respond to needed repairs throughout the night. This shift is scheduled regularly Monday through Friday. Second, the Employer regularly schedules other mixed crews throughout the year to perform renovation work in the hotel tower. These crews operate for "much of the year." Third, wit-

<sup>12</sup> The Employer stated that this list represents only a portion of the transfers involving the carpentry shop. The Employer does not maintain a searchable computer system to track transfers. Instead, the records were produced by a manual search of some portion of the Employer's personnel files and in the time that the documents were requested "it would have been impossible to go through them all." However, there is no indication what percentage of the files were actually searched.

<sup>13</sup> These instances of interchange included a bar porter, a pool specialist, a temporary engineer, and a security department employee transferring to the carpentry crew and carpenters transferring to engineering crew positions, a crew leader position, and a project foreman position.

<sup>14</sup> Cecil Hardin transferred from the carpentry crew in January 1997 to join the engineering crew, only to return to the carpentry crew in April 1997.

nesses for the Petitioner testified that noncarpenters often enter the carpentry shop to either obtain scrap wood or to use some of the tools in the carpentry shop.<sup>15</sup>

### G. History of Bargaining

There is no bargaining history at the Employer's site; and no other union is seeking to represent the petitioned-for employees in a larger unit. Helen Kramer, the Employer's vice president for human resources, testified regarding the union representation in the Mirage's local sister properties. Three of the Employer's related properties have unionized engineering departments; two, MGM Grand and New York, New York, have wall-to-wall units represented by the Operating Engineers, while one, the Golden Nugget, has a separate unit of carpenters represented by the Petitioner.

William Harris, the Petitioner's business representative, testified regarding contracts that the Petitioner has with other local casino-hotels. The Petitioner represents various carpenter-related units at 22 hotels in the Las Vegas area.<sup>16</sup> Of those 22, 10 are carpenter/upholsterer units, 8 are carpenter only units,<sup>17</sup> 3 are carpenter/upholsterer/locksmith units,<sup>18</sup> and 1 is a carpenter/locksmith unit. According to Harris, none of these units was recognized pursuant to a Board certification. Rather, they were all voluntarily recognized.

## II. ANALYSIS

The Board has long held that a "craft unit" consists of a distinct and homogeneous group of skilled journeymen craftsmen who, together with helpers or apprentices, are primarily engaged in the performance of tasks which are not performed by other employees and which require the use of substantial craft skills and specialized tools and equipment. *Burns & Roe Services Corp.*, 313 NLRB 1307, 1308 (1994). In determining whether a petitioned-for craft unit is appropriate the Board examines (1) whether the employees take part in a formal training or apprenticeship program; (2) whether the work is functionally integrated with the work of the excluded employees; (3) whether the duties of the petitioned-for employees overlap with the duties of the excluded employ-

ees; (4) whether the employer assigns work according to need rather than on craft or jurisdictional lines; (5) and whether the petitioned-for employees share common interests with other employees. *Id.* However, in non-construction industry cases, the Board has not limited its inquiry solely to these factors. Instead, the Board will "determine the appropriateness of the craft unit sought in light of all factors present in the case." See *E. I. du Pont & Co.*, 162 NLRB 413, 417 (1966).

This analysis comports with the Board's longstanding policy of applying a traditional community-of-interest test to determine the appropriateness of units in the hotel industry. See *77 Operating Co.*, 160 NLRB 927 (1966), *enfd.* 387 F.2d 646 (4th Cir. 1967); *Westin Hotel*, 277 NLRB 1506 (1986); *Omni International Hotel*, 283 NLRB 475 (1987); *RB Associates, Inc.*, 324 NLRB 874, 877 (1997). Accordingly, in addition to the craft unit factors listed above, the Board will also inquire into (1) differences in the type of work and skills of the employees, (2) functional integration of operations, (3) bargaining history, (4) differences in wages and employment benefits, (5) extent of interchange and contact between the petitioned-for employees and the excluded employees, and (6) extent of common management and supervision. See *Skyline Distributing*, 319 NLRB 270, 277 (1995).

Applying these factors here, we find that the carpenters sought by the Petitioner possess and exercise the skills of craft carpenters and enjoy a separate community of interest from the other engineering employees. Additionally, consistent with the area practice, we find that the upholsterers are properly included in the unit. Contrary to our dissenting colleague, we are not convinced that either the integrated nature of the Employer's operation or the instances of unskilled carpentry work being performed by noncarpenters negate the craft status of the carpenters so as to require that they be included in a larger engineering department unit.

First, we find, and our dissenting colleague does not disagree, that the petitioned-for employees are skilled journeymen craftsmen. The Employer requires carpenters to have at least 2 to 5 years of carpentry experience before being hired. An official of the Employer testified that this experience requirement was equivalent to journeymen status. Moreover, the carpenters are paid at a skilled labor level and substantially more than unskilled employees such as sign makers (\$14.10), laborers (\$12.85), and pool specialists (\$11.05).<sup>19</sup> These pay rates, along with the experience requirement, strongly

<sup>15</sup> There is some dispute over whether these visits are done with the Employer's permission. However, no one disputes that they do, in fact, occur.

<sup>16</sup> The hotels represented by the Petitioner are Mandalay Bay, Luxor, Excaliber, Tropicana, Paris, Bally's, Caesar's, Flamingo, Harrah's, New Frontier, Desert Inn, Stardust, Riviera, Sahara, Las Vegas Hilton, Union Plaza, Golden Nugget, Four Queens, Fitzgerald's, El Cortez, Showboat, and Circus Circus.

<sup>17</sup> In any hotel where the Petitioner does not represent upholsterers it is either because the hotel does not have an upholstery shop or has a shop but does not have any employees assigned to work in it.

<sup>18</sup> One of these three, the Desert Inn, is in the process of closing and there is currently only one carpenter remaining on site.

<sup>19</sup> Carpenters earn \$22.53, well within the range earned by other skilled members of the Employer's engineering department.

support our finding that the Employer seeks and hires carpenters with journeymen carpentry skills. Moreover, the absence of a formal apprenticeship program does not negate this finding where the carpenters are hired with significant experience. See *Wal-Mart Stores*, 328 NLRB 904, 907 (1999) (“That the Employer does not have a meatcutter apprenticeship program or other formal training in meatcutting is of little relevance here, as the meatcutters had prior experience when hired.”); *Anheuser-Busch, Inc.*, 170 NLRB 46 (1968) (finding craft status in absence of formal training program where electricians were hired with 3 to 4 years of experience).

Further, the employees on the carpentry crew have craft identity. The Employer assigns all work requiring more than the most basic of skills along craft lines. Virtually all of the carpentry work at the Mirage is performed by the carpentry crew. While there are some examples of noncarpenters performing carpentry-like work, these are limited to low-skilled work, such as tightening screws on a chair or fixing a drawer slide. Additionally, where the carpenters perform work that is not traditional carpentry work, it is closely related to their carpentry work. Thus, while the carpenters may occasionally pull a sink or move conduit in connection with carpentry repairs, they do not perform work totally unrelated to carpentry work such as pool cleaning or electrical work.

The Employer’s carpenters and upholsterers are on separate crews with their own supervisors. Each crew is supervised by a crew leader who assigns work, monitors work reports, ensures quality control, assigns approved overtime shifts, recommends discipline and hiring and performs various administrative tasks with respect to their crews. While the Employer and our dissenting colleague argue that the carpenters and upholsterers are not separately supervised, the Employer stipulated that the crew leaders are statutory supervisors. Based on both this stipulation and the crew leaders’ duties, we find that the carpenters and upholsterers are separately supervised. See *Super K Mart Center*, 323 NLRB 582 (1997), *enfd.* 174 F.3d 834 (7th Cir. 1999).<sup>20</sup>

The carpenters are also highly skilled and they perform nearly all of the Employer’s high-skilled carpentry work. While other employees such as the casino engineers may

perform low-skilled repair work, whenever that repair work is beyond the simple tightening of a screw, it is saved for the carpenters to repair during the day shift. That there is some overlap in lesser-skilled duties does not destroy the appropriateness of a separate carpenters unit. See *Schaus Roofing & Mechanical Contractors, Inc.*, 323 NLRB 781 (1997) (“Though some employees performed unskilled work in other trades, the overlapping of duties in the lesser-skilled aspects of a trade does not preclude a craft unit.”); *Burns & Roe Services Corp.*, *supra* at 1307 (“Thus, despite some overlap of job functions, it appears that the majority of the nonelectrical employees do not have the expertise to perform the more complicated electrical work, and do not on a regular or routine basis perform work comparable to that performed by the electrical employees.”); *E. I. du Pont & Co.*, *supra* at 413 (finding appropriate a craft unit of electricians despite some overlap of functions requiring lesser expertise). Even when the Employer assembles mixed crews on the night shift or during the year to refurbish its hotel rooms, each member of the crew performs only the work associated with their traditional craft—carpentry, plumbing, painting, etc. *Burns & Roe Services Corp.*, *supra* at 1308 (“On occasion, when a particular job requires a mix of skills, the Employer may assemble a team of employees; however, even in those situations, electricians principally work on the electrical systems while nonelectrical employees work on the mechanical systems.”).

The carpenters’ skill is also reflected in the machinery they employ in their workshop. The Employer provides nearly every piece of carpentry equipment imaginable. While other employees may occasionally enter the carpentry shop to pick up scrap wood or other simple tools, there is no evidence that employees other than the carpenters use the skilled machinery located in the shop. Their skill is also reflected in the fact that their wages are near the top of the Employer’s engineering department pay scale. The carpenters earn nearly \$10 an hour more than their unskilled coworkers on the laborer, sign maker, and pool specialist crews.

The differences in skills are also seen in the limited nature of the interchange between the crews. With the possible exception of one individual, the record is devoid of evidence of temporary interchange between the carpentry crew and the rest of the department. Between 1992 and 1999 there were only 13 instances of permanent transfers involving the carpentry crew. Moreover, there were no transfers, temporary or permanent, during the 17 months preceding the hearing. Evidence of 14 transfers over a 10-year span is insignificant. See *Hilton Hotel Corp.*, 287 NLRB 359, 360 (1987). These are simply not “the type of periodic temporary transfers or lateral, two-way

<sup>20</sup> Our dissenting colleague also notes that 1 of the 17 carpenters is commonly supervised by the night-shift supervisor. We do not view that fact as significant, involving only 1 of the 17 carpenters. Clearly, nearly all of the carpenters are under the direct supervision of the crew leader. In any event, that the night carpenter may be under common supervision with other employees is but one factor to be considered, and it is outweighed here by all other relevant factors. Cf. *Ore-Ida Foods*, 313 NLRB 1016, 1019 fn. 3 (1994), *enfd.* 66 F.3d 328 (7th Cir. 1995).

transfers between departments that may suggest blurred departmental lines and a truly fluid work force with roughly comparable skills.” Id. And, while the Employer argues that this evidence represents only a portion of the transfers involving the carpentry crew, it provides no evidence as to what percentage of the actual transfer rate this evidence represents. Moreover, the Board has historically accorded permanent transfers less weight than temporary interchange in assessing the community of interest shared by two groups of employees. *Ore-Ida Foods, Inc.*, supra at 1021 fn. 4.

Various other facts set the carpenters apart from the other employees in the engineering department. The carpenters wear a distinct brown uniform while other employees wear either blue or white. This distinct uniform was provided at the request of the carpenters, who indicated to the Employer that their work environment necessitated a uniform change. Moreover, the method by which carpenters receive their assignments is different from that of most other members of the engineering department. Engineering crew members, who make up nearly half of the engineering department, all carry two-way radios and receive the vast majority of their assignments directly from dispatch over the radio. However, only one carpenter beside the crew leader and tower carpenter carries a radio, and the carpenters receive their assignments almost exclusively from their crew leader on written work orders. Additionally, unlike the engineering crew, which works all three shifts in significant numbers, all of the carpenters, with the exception of the lone night carpenter, work exclusively on the day shift. While the carpenters share terms and conditions of employment such as vacation, leave, and benefit programs with other employees, these policies are common to all of the Employer’s employees, not just those employees in the engineering department.

Finally, contrary to our dissenting colleague’s position, the area practice here strongly supports a separate carpenter and upholsterer unit. In the Las Vegas area, the Petitioner represents carpenters in separate craft units at 22 large hotel-casinos similar to the Mirage.<sup>21</sup> In fact, the Petitioner represents a separate carpenters unit at the Employer’s sister property, the Golden Nugget. Our dissenting colleague argues that these 22 hotels cannot create a compelling area practice because they represent only a small percentage of the hotels in the Las Vegas area. However, these 22 properties certainly represent a substantial percentage of comparable area employers—that is, large casino-hotels located on the “Las Vegas

Strip.” Furthermore, the record is largely silent regarding area practice at the remaining large casino-hotels and the Petitioner’s evidence regarding area practice therefore stands unchallenged.

Our dissenting colleague accuses us of breaking new ground and departing from precedent by finding the petitioned-for unit appropriate. He is mistaken. We rely on longstanding precedent that allows, in certain limited circumstances, the creation of a craft unit from an overall maintenance department. See *Burns & Roe*, 313 NLRB at 1307; *E. I. du Pont & Co.*, 162 NLRB at 413; *Fremont Hotel*, 168 NLRB 115 (1967) (finding petitioned-for unit of slot machine mechanics an appropriate craft unit). Given the size of this Employer’s engineering department, the journeymen status of the carpenters, the separate supervision, the assignment of work along craft lines, the lack of material overlap and interchange, and the significant area practice, we find that this case presents such limited circumstances. We see no reason why our decision today, limited to these particular facts, will lead to an explosion of small craft units at this or any other hotel, as feared by our dissenting colleague.

Accordingly, based on the above, including the absence of bargaining history on a more comprehensive basis, the area practice of separate carpenter-upholsterers units, the separate craft identity, the separate functions, skills, and supervision, and the absence of significant overlap in duties or interchange, we find that the petitioned-for unit of carpenters and upholsterers is an appropriate unit for collective bargaining. We therefore remand this case to the Regional Director for further processing in accordance with this decision.

MEMBER COWEN, dissenting.

Today my colleagues take the unprecedented step of lopping off a unit of 23 carpenters and upholsterers from a hotel engineering department consisting of 210 employees. In so doing, they take the first step towards dissecting this engineering department or similar departments at other hotels into an infinite number of miniature units. The same logic applied by the majority to justify its conclusion would also lend support for separate units of the Employer’s engineers, painters, plumbers, laborers, or any other subdivision of its engineering department. Instead of dismembering the Employer’s engineering department, I would adopt the Regional Director’s thoughtful decision finding the petitioned-for unit, and the proposed alternative units, inappropriate for bargaining.<sup>1</sup> While I agree with my colleagues’ recita-

<sup>21</sup> In these 22 hotels, the carpenters are either in their own unit or represented in carpenter-upholsterer, carpenter-locksmith, or carpenter-upholsterer-locksmith units.

<sup>1</sup> Under no view of the facts is a separate unit of upholsterers appropriate as the record fails to support the conclusion that they constitute a

tion of the facts, I would find that the record strongly favors an overall engineering department unit, and not a separate craft unit.

Both the Petitioner and my colleagues fail to cite a single case in which the Board has found a separate craft unit of carpenters to constitute an appropriate unit in a hotel setting. In fact, the only case in which the Board has found appropriate a separate craft unit as a subdivision of an overall hotel maintenance department is plainly distinguishable.

In *Fremont Hotel, Inc.*, 168 NLRB 115 (1967), the Board found a petitioned-for unit of slot machine mechanics appropriate. In finding the unit appropriate, the Board relied on the fact that (1) the employer ran a four-year slot mechanic training program; (2) the slot mechanics did not interchange jobs with other employees; (3) the repair of the slot machines was the *sole* responsibility of the slot mechanics; (4) the slot mechanics' separate supervisors could hire and fire, and were the sole judges of the slot mechanic raises; (5) the slot mechanics had a distinct uniform; (6) the slot mechanics were the highest paid employees in the casino; and (7) the slot mechanics were the only unrepresented employees in the maintenance department. Based on these facts, the Board concluded that the slot mechanics constituted a separate craft unit. Unlike in *Fremont Hotel*, here it is undisputed that (1) the Employer does not operate a formal or informal training or apprenticeship program, (2) the carpenters do in fact interchange jobs with other employees, (3) the carpenters are not the only employees who perform carpentry work, (4) the carpenters are not even the highest paid employees in the engineering department, much less the entire hotel, and (5) none of the Employer's engineering department employees are organized.

Not only has the Board failed to find other classifications at hotels to be appropriate craft units, it has in three subsequent cases distinguished *Fremont Hotel* and declined to find other units of slot machine mechanics appropriate craft units. See *Nevada Club*, 178 NLRB 81 (1969); *Aladdin Hotel*, 179 NLRB 362 (1969); *Hotel Tropicana*, 176 NLRB 375 (1969). Accordingly, *Fremont Hotel* represents a narrow exception where the Board found a subset of a hotel maintenance department to constitute an appropriate separate unit. Given the paucity of similarities between the present case and *Fremont Hotel*, it simply does not apply. And, even using the craft unit cases involving production facilities relied on by both the Petitioner and the majority, I would still find,

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craft unit of skilled workers. Indeed, the record is virtually devoid of facts on the upholsterers.

as explained below, that a separate unit of carpenters and upholsterers is not appropriate.

#### A. Overlapping Duties

Despite my colleagues' insistence to the contrary, the record reflects significant overlap in duties between carpenters and other excluded employees. First, it is undisputed that the Employer's fabrication crew performs traditional carpentry work when building wooden platforms, repairing wooden gates, and building wooden barricades. Second, there is clear testimony that the casino engineers perform carpentry work when needed. Night-Shift Supervisor Antonello Leone testified that the casino engineers routinely make small repairs to doors, chairs, and furniture. They also repair the drawer slides on gaming table cash drawers when needed, including drilling new holes for the slide. Leone also testified that he has both performed and observed other engineers perform carpentry work, including fixing drawers, repairing stall and entry doors, tables, and chairs. Leone also testified that he once witnessed casino engineers sanding a countertop and that he repaired a large hole in drywall, requiring the installation of new metal studs. This work generally occurred either at night when the on-duty carpenter was busy or not at work that night or during the weekend when no carpenter was scheduled.

My colleagues argue that such isolated instances of other employees performing lower-skilled duties do not constitute material overlap of duties. In doing so, they mistakenly rely on the Board's decisions in *Burns & Roe Services Corp.*, 313 NLRB 1307 (1994); *E. I. du Pont & Co.*, 162 NLRB 413 (1966); and *Schaus Roofing & Mechanical Contractors, Inc.*, 323 NLRB 781 (1997). In both *Burns & Roe* and *E. I. du Pont & Co.*, the Board relied on the fact that the performance of lower-skilled work by other employees was infrequent and not routine. See *Burns & Roe*, 313 NLRB at 1309 (relying in part on "the lack of evidence establishing that nonelectrical employees regularly or routinely perform similar work to that performed by electrical department employees"); *E. I. du Pont & Co.*, 162 NLRB at 418 (noting that "although other employee classifications, such as instrument mechanics and oilers, perform some of the less skilled functions of electricians, they do so infrequently"). And, in *Schaus Roofing & Mechanical Contractors, Inc.*, *supra* at 784, the Board adopted the Regional Director's finding that a pipe fitter who spent over a quarter of his time doing sheet metal work (only some of which was skilled), was appropriately included in a sheet metal craft unit.

Here, the record is clear that other employees perform carpentry work on a routine and regular basis. That this work is not of the highest level is of no moment. Leone

testified that as a casino engineer he spent approximately 35 percent of his time doing carpentry work. Also, the fabrication crew performs carpentry work as part of their duties. Just as important, the record shows that carpenters have performed noncarpentry work at times. The Petitioner's own witnesses testified that they at times either pulled or installed sinks while working on countertops and that they have moved electrical conduit while working on walls. Finally, the carpenters, as part of their normal duties, are responsible for cutting glass for picture frames—work not generally associated with carpentry. Thus, it is clear that the carpenters do not solely perform carpentry work.

### B. Common Supervision

The majority places great emphasis on the fact that the parties stipulated that the crew leaders are statutory supervisors under Section 2(11) of the Act. My colleagues elevate form over substance. The stipulation was limited to the crew leaders' use of independent discretion in assigning work to the carpenters. While this may be sufficient to exclude the crew leaders from the unit under Section 2(11) of the Act, it is not necessarily enough to find that the carpenters and upholsterers have a community of interest separate and apart from the rest of the engineering department. That is, the simple fact of different supervision does not mandate excluding separately supervised employees. See, e.g., *Hotel Services Group*, 328 NLRB 116, 117 (1999) (separate unit of licensed massage therapists at hotel resort and spa not appropriate despite separate supervision "in some respects").

Here, it is clear that the crew leaders' primary authority with respect to the daily operation of their departments is to assign work orders received from others and to ensure their completion. All other supervisory functions are vested in Director William Ham or the assistant chiefs. Director Ham testified that he makes all final decisions with respect to hiring, firing, discipline, and department policy. Many of these functions are made in consultation with the assistant chiefs, not the crew leaders. The rest of the daily operational duties are carried out by the assistant chiefs. The assistant chiefs are responsible for approving overtime requests, leave requests, vacation requests, and recommending employee discipline or counseling to Director Ham. The Petitioner's own witnesses confirmed that they go to the assistant chief to get leave approved. Accordingly, at a minimum, the true loci of supervisory authority are the assistant chiefs, who are responsible for the supervision of many individual crews.<sup>2</sup> Common supervision on the

night shift is even clearer where, each night, under the common direction and supervision of Night-Shift Supervisor Leone, one carpenter, two engineers, two plumbers, and a painter work on a preventative maintenance team.

Despite the Petitioner's argument to the contrary, the fact that the assistant chiefs and Director Ham have actual, first line supervisory responsibilities over the carpenters, upholsterers, and the rest of the engineering department leads to the conclusion that separate supervision is not an overriding factor requiring a separate carpentry unit.

### C. Interchange and Interaction

#### 1. Permanent interchange

Unlike my colleagues, I would find significant evidence of permanent interchange between the carpenters and other crews. In determining whether a petitioned-for separate unit is appropriate, the Board examines the level of interchange—both temporary and permanent—between the petitioned-for employees and the excluded employees. See *Burns & Roe*, 313 NLRB at 1308. The sample of transfers into and out of the carpentry crew shows that from 1992 through 1999 six employees have transferred onto the carpentry crew from other positions, while eight have moved from the carpentry crew to other engineering department jobs.<sup>3</sup>

The Regional Director correctly relied on this evidence of permanent interchange in finding the petitioned-for unit inappropriate. With the exception of the 1992 transfer of a laborer to a junior carpenter position, all of the transfers concerned skilled positions. Moreover, in the 7 years covered by the Employer's sampling, a total of fourteen transfers involving the carpentry crew were made. This amounts to at least two transfers a year on a crew which currently stands at eighteen employees. Using the current staffing level, over 10 percent of the carpentry crew was affected by permanent interchanges each year for 7 years.

Given these examples of permanent interchange and the fact that members of the fabrication crew employ carpentry skills in building wooden platforms, fences, barricades, and gates, it is clear that there are non-carpenters with the skills necessary to perform the duties of the carpentry crew and carpenters with the skills necessary to perform the duties of other crews. The Board, in determining the appropriateness of separate craft units, has examined whether other employees have the same skills as the employees in the alleged skilled craft unit.

Lello, under whom the upholstery crew falls, is also responsible for the casino, hotel, pool/plumbing, and laborer crews.

<sup>3</sup> These numbers include an employee who temporarily transferred from the carpentry crew to the engineering crew.

<sup>2</sup> Aside from carpentry, Assistant Chief Lyons is responsible for the tram, fabrication, mechanical, and electrical crews. Assistant Chief



See *Burns & Roe*, 313 NLRB at 1308. Apart from the fabrication crew and the casino engineers, there are at least 10 employees who had the skills used by the carpenter crew and other crews in the engineering department due to internal transfers. That so many employees other than the petitioned-for carpenters both possess and use at least some level of carpentry skill does not comport with finding the petitioned-for unit appropriate.

## 2. Interaction with excluded employees

Besides this material interchange, the carpenters have a high level of interaction and contact with the excluded employees. Carpenters punch in and out on the same timeclocks used by the rest of the engineering department. The Petitioner's witnesses testified that non-carpenters often come into the carpentry shop to get supplies and to use tools. Carpenters also attend approximately 8 to 10 training sessions a year with other engineering department employees. Moreover, the carpenters are routinely scheduled with other engineering employees on mixed crews. This occurs each night during the week on the regularly scheduled preventative maintenance crew and regularly throughout the year on room renovation crews.

These facts led to the Regional Director's conclusion that the Employer's engineering department is functionally integrated, negating the appropriateness of a separate craft unit, and I agree with the Regional Director.

## D. Bargaining History

Finally, my colleagues place great reliance on what they consider to be a significant area practice of separate carpenter/upholsterer representation in the Las Vegas hotel industry. The record shows that the Petitioner represents separate carpenter-related units at 22 other Las Vegas area casino-hotels. Nevertheless, I agree with the Regional Director that this fact is simply not decisive.

See, e.g., *Washington Palm, Inc.*, 314 NLRB 1122, 1128 (1994) (noting "the Board has held that where other relevant factors predominate, the factor of area practice does not render an otherwise inappropriate unit, which conforms to area practice, an appropriate one").

First, it is clear from the record that the 22 hotels at which the Petitioner represents separate carpenter units does not constitute anywhere near a majority of the hotels in the Las Vegas area. I am simply not prepared to consider the Petitioner's success at convincing 22 employers to voluntarily recognize separate carpenter units as an overwhelming area practice. Moreover, even if the 22 contracts could establish a pattern for bargaining in the Las Vegas area, the mere existence of such a pattern, particularly when created through voluntary recognition, does not prevent the Board from fulfilling its statutory duty to determine the appropriateness of the petitioned-for unit.

Second, the bargaining history at the Employer's related facilities is markedly different. Of the Employer's sister casino-hotels with unionized engineering departments, two have wall-to-wall units and only one, the Golden Nugget, has a separate carpenters unit. Based on these facts, I would accord the Petitioner's evidence of area bargaining practice, little, if any, weight.

In sum, the facts here do not support the unparalleled departure the majority has taken here. The carpenters are not separately supervised, do not take part in a formal apprenticeship program, and are not required to be certified journeymen. In addition, there is interchange with other departments at significant levels, overlapping duties with other departments, and common policies, benefits, and break areas. These facts outweigh any others that tend to support the appropriateness of the petitioned-for unit. Accordingly, I would affirm the Regional Director.